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BEING

REPORTS OF MALAYSIAN AND SINGAPORE CASES DETERMINED IN THE HIGH COURTS, THE FEDERAL COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

SINGAPORE REPORTS

DOK-EN WERF-MAATSCHAPPIJ WILTON-FIJENOORD N.V. v. THE OWNERS OF THE MOTOR VESSEL "SAUVEREAL"

[O.C.J. (Chua J.) March 22, 1972]

[Singapore — Motion in Admiralty In rem No. 250 of 1971]

Practice and Procedure — Admiralty suit — Action in rem to recover monies for repairs to vessel — Lis alibi pendens — Similar actions pending in other countries concurrently — Whether present action vexatious, mala fide or an abuse of process of court — Motion to set aside or stay — Forum conveniens.

Practice and Procedure — Admiralty suit — Affidavit to lead warrant of arrest of vessel — Contents of — R.S.C. 1970, O. 70.

The plaintiffs claimed S$1,935,837.53 for repairs executed by them to the motor vessel *Sauvereal* at the port of Rotterdam in 1968 and early 1969. On May 21, 1969, the ship's agents, a French company (hereinafter called S.T.T.M.), commenced legal proceedings against the plaintiffs in Paris seeking cancellation of the plaintiff's repair invoices, a declaration that the amounts claimed in the invoices were not due, and claiming general damages of one million French Francs for alleged negligent repair. The plaintiffs filed a defence to this claim alleging that S.T.T.M.'s claim was not admissible since S.T.T.M. was a mere agent, and that the Paris court had no jurisdiction. The plaintiffs also counterclaimed in the Paris proceedings for the costs of the repairs.

On March 18, 1970, the plaintiffs commenced proceedings in Rotterdam against the owners of the ship, and against the charterers at the time the repairs were carried out, and also against a company which had succeeded the said charterers, claiming the costs of the repairs.

On March 23, 1970, the charterers and the owners applied to intervene in the Paris proceedings, to which the plaintiffs objected, contending that the Paris court had no jurisdiction, and that these proceedings should be stayed having regard, *inter alia*, to the concurrent Rotterdam proceedings. There was no further development in the Rotterdam proceedings, but on December 8, 1971, the Paris court delivered judgment stating that the claim of the agents S.T.T.M. was admissible in the Paris proceedings, granting the charterers and the owners permission to join in the Paris proceedings, and declining to stay the Paris proceedings on the ground that there were other proceedings pending in Rotterdam. On the main issue of whether the repairs were properly carried out, the Paris court made no finding but referred the matter to an expert. The plaintiffs appealed against the judgment of the Paris court.

On December 28, 1971, the plaintiffs arrested the motor vessel *Sauvereal* in Singapore. The defendants applied by motion to set aside the writ and all subsequent proceedings on the grounds that the arrest of the vessel was undertaken *mala fide* and was an abuse of the process of the court. The defendants contended that the affidavit to lead the warrant of arrest was misleading in that it made no reference at all to the Paris and Rotterdam proceedings.

Held, dismissing the motion: (1) all that the affidavit to lead the warrant, need show, was that the plaintiffs had a *prima facie* case. Nothing in R.S.C., Order 70 required the plaintiffs to state the history of the case or to refer to the Paris or the Rotterdam proceedings;

(2) the remedy of setting aside was only available for an alleged informality or irregularity which rendered either the writ or service thereof invalid, or in a case of lack of jurisdiction, none of which were present in this case;

(3) a stay would not be granted because the proceedings were not vexatious. The institution of an action in Singapore was not vexatious simply because a similar action was pending in another country. However, if bail had been furnished in another country, it would be vexatious to arrest a ship in this country for the same cause of action;

(4) *prima facie*, parties who come to this court have a right to have their trial in this court and the court should not deprive them of this right until a clear case had been made out against them;

(5) convenience in such matters as the calling of witnesses was not a dominant factor, though it was one which might assume some importance when other things were equal. A mere balance of convenience was not a sufficient ground for depriving a plaintiff of his right to obtain security by prosecuting an action *in rem* in this court and arresting the *res*;

(6) the motion must accordingly be dismissed with costs, and the plaintiffs would be restrained from prosecuting the Rotterdam proceedings against the owners.

Cases referred to:-

(1) *The Christianborg* (1885) 10 P.D. 141, at p. 152.

(2) *The Lucile Bloomfield* [1964] 1 Ll.R. 324, at p. 329.

The following cases were also cited in argument: *The Jasep* (1896) 12 T.L.R. 375; *The Mannheim* [1896] P. 13; *Societe du Gaz de Paris* v. *La Societe Anonyme de Navigacione* [1925] 23 Ll.L.R. 209; *The Golaa* [1926] P. 103; *The Janera* [1928] P. 55; *The Glenluce* (1929) 34 Ll.L.R. 407; *The London* [1931] P. 14; *Saint Pierre* v. *South American Store* [1936] 1 K.B. 382; *The Hartlepool* (1950) 84 Ll.L.R. 145; *The Quo Vadis* [1951] 1 Ll.R. 425; *The Monte Urbasa* [1953] Ll.R. 587; *The Marinero* [1955] P. 68; *The Eleftheria* [1957] 1 Ll.R. 288; *The Soya Margareta* [1960] 1 Ll.R. 675; *The Cap Bon* [1967] 1 Ll.R. 543; *The Moscanthy* [1971] 1 Ll.R. 37.

[Editorial Note: An appeal against this decision was subsequently withdrawn.]

ADMIRALTY ACTION.

K. A. O'Connor for the plaintiffs.

T. H. A. Potts for the defendants.

Chua J.: On 25th December, 1971, the plaintiffs issued a writ of summons *in rem* against the owners

of the motor vessel "Sauvereal" (hereinafter called "the vessel") claiming $1,935,837.53, being the equivalent of Dutch Guilders 2,148,066.50, for repairs executed to the vessel at the Port of Rotterdam during late 1968 and early 1969 at the request of the defendants and/or of their agents. The vessel was arrested in Singapore on 28th December, 1971. The defendants entered conditional appearance on 6th January, 1972.

The defendants now moved the court for the following orders:

(1) That the writ of summons and all subsequent proceedings herein be set aside on the grounds that the arrest of the vessel herein was undertaken *mala fide* and is an abuse of the process of this honourable court.

(2) Alternatively that all further proceedings herein be set aside on the grounds that the maintenance of the arrest of the said vessel is an abuse of the process of this honourable court.

(3) Alternatively that all further proceedings in this action be stayed on the grounds that the plaintiffs' claim herein has already been satisfied by judgment of a foreign court in a forum selected by the plaintiffs.

(4) That the said vessel be released under the provisions of O. 70 r. 12(4).

(5) That the plaintiffs do pay to the defendants damages to be assessed by the registrar for the detention of the said vessel from the date of arrest until the date of release.

(6) That the defendants be granted such further or other relief as this honourable court shall deem necessary.

(7) That the costs of these proceedings be taxed and paid by the plaintiffs to the defendants.

Before proceeding further it is necessary to set out the history of the dispute between the plaintiffs and the defendants.

On 19th April, 1968, Compagnie D'Armement Maritime (hereinafter called "C.A.M."), whose registered office is in Panama and who have offices in Geneva, purchased the vessel. On 22nd April, 1968, C.A.M. resold the vessel to its subsidiary company, Annapurna Shipping Co. S.A. whose registered office is also in Panama and also has the same offices in Geneva, (hereinafter called "Annapurna"). By contract dated 20th May, 1968, Annapurna chartered the vessel to C.A.M. The agents in France of the vessel are Societe Des Travaux et Transports Maritimes SA of Paris (hereinafter called "S.T.T.M.").

In or about June, 1968, S.T.T.M. entered into a contract with the plaintiffs for the repair of the vessel at the plaintiffs' shipyard at Rotterdam. The defendants alleged that the repairs were improperly or negligently performed by the plaintiffs as a result of which the vessel had to be further repaired in Italy during the year 1969.

By writ dated 21st May, 1969, S.T.T.M. commenced legal proceedings against the plaintiffs in a French court in Paris (hereinafter referred to as the French proceedings) seeking the cancellation of the invoices of the plaintiffs and a declaration that the sums on the invoices were not due and claiming one million French Francs general damages against the plaintiffs for the costs of the repairs carried out in Italy. The plaintiffs filed a defence against the claim alleging (1) that S.T.T.M.'s claim was not admissible since it was a mere agent; (2) that the French court has no jurisdiction, and the plaintiffs counterclaimed for costs of repairs.

On 18th March, 1970, the plaintiffs commenced proceedings in Rotterdam (hereinafter called "the Dutch proceedings") against C.A.M., Annapurna and Nouvelle Compagnie d'Armement Maritime (hereinafter called "Nouvelle") claiming the sum of 2,148,066.50 Dutch Guilders for repairs of the vessel. Nouvelle is a company incorporated in Panama and is described in the Dutch writ as "being a company having legal personality and being the defendant under 1 (*i.e.* C.A.M.) under a different name, or alternatively the successor in title to all the rights and obligations of defendant under 1 (C.A.M.)". Nouvelle signed some of the cheques paid to the plaintiffs.

On 23rd March, 1970, C.A.M. and Annapurna applied to intervene in the French proceedings and asked to be joined as co-plaintiffs. The plaintiffs answered the application on 13th May, 1970, saying again that the French court has no jurisdiction and that there was another case pending in Rotterdam. The plaintiffs did not counterclaim against C.A.M. or Annapurna.

S.T.T.M., C.A.M., and Annapurna replied to the plaintiffs' plea of no jurisdiction and concurrent proceedings in Holland by offering to pay US.$13,196.83, being the difference between the plaintiffs' claim and costs of repairs due to the plaintiffs' alleged negligence. The French court, however, would not allow anyone to set off.

There has been no further development in the Dutch proceedings for nearly two years.

The French court delivered judgment on 8th December, 1971. The court decided:

(1) that the claim of S.T.T.M. was admissible;

(2) that C.A.M. and Annapurna could join as co-plaintiffs;

(3) that the claim of C.A.M. and Annapurna should not go to the Rotterdam court.

On the main issue the court made no finding but referred the matter to an expert. The judgment reads:

"Whereas the facts of the case have not been sufficiently clarified for the court to be able to rule on these sums with full knowledge of the matter, it is therefore necessary to resort to an investigatory measure, the expert having as mission:

1) to examine the works carried out and the amount of the invoices .....

2) to say whether the break-downs were due to a malpractice by W.F. .....

3) to estimate the possible prejudice arising therefrom.....

4) to reconcile the parties if this can be done ..... the expert may have himself assisted and failing reconciliation must submit his report within a period of 3 months which may be extended at his request."

It is clear, therefore, that the French court has made no finding as to whether the repairs were done properly or not, whether the contract was valid or not and whether the invoices were excessive or not.

On 22nd December, 1971, the plaintiffs lodged an appeal against the judgment of the French court. The appeal is pending.

The defendants' motion asked for various alternative reliefs. The first relief asked for is that the writ and all subsequent proceedings be set aside on the grounds that the arrest of the vessel was undertaken *mala fide* and is an abuse of the process of the court.

Counsel for the defendants says that the affidavit leading to the arrest of the vessel is misleading by its failure to refer to the French and Dutch proceedings. He says that the affidavit should be full and accurate as the court is entitled to know all the relevant facts and he submits that the arrest is wrongful and the vessel should be released.

What must be stated in the affidavit is set out in 0.70 of the Rules of the Supreme Court. Nowhere in that order is it provided that the plaintiffs must set out the history of the case. All that is required is for the plaintiff to show on the affidavit that he has a *prima facie* case.

There is no evidence and indeed it has not been suggested in argument that the arrest of the vessel was undertaken *mala fide* and is an abuse of the process of the court. The rules have been complied with and in my view the arrest is proper.

Next it is submitted that these proceedings be set aside on the grounds that they are vexatious as the same question raised in the Singapore proceedings has been raised in the French and Dutch proceedings. In my view the remedy of setting aside is only available for an alleged informality or irregularity which renders either the writ or service invalid or for lack of jurisdiction.

The first and second grounds of the motion are therefore without substance.

The third relief asked for by the defendants is that all further proceedings in this action be stayed on the ground that the plaintiffs' claim herein has already been satisfied by judgment of the French court. In the course of argument, however, stay was also asked for on the ground that the proceedings here are vexatious.

Lord Justice Baggallay in *The Christianborg*[1] said at page 152:

"I take it to be established by a series of authorities that where a plaintiff sues the same defendant in respect of the same cause of action in two courts, one in this country and another abroad, there is a jurisdiction in the courts of this country to act in one of three ways, — to put the party so suing to his election, or, without allowing him to elect, to stay all proceedings in this country, or to stay all proceedings in the foreign country — it is not in form a stay of proceedings in the foreign court, but an injunction, restraining the plaintiff from prosecuting the proceedings in the foreign country, which of course cannot be enforced against him if he is a foreigner, and is neither present in this country nor has property here. It is an injunction which may become inoperative, but that is how the proceedings in the foreign court may in effect be stayed. The principle of election is clearly expressed in the case of *McHenry* v. *Lewis* 22 Ch. D. 397, the marginal note of which case correctly represents the decision. The judgment there drew a distinction between the two actions being brought in English courts, and a case in which one action is brought in a British court and the other in a foreign court, and the distinction is that which I draw in this case, that *prima facie* it is vexatious to sue the same party in two different actions in two British courts, but that it is not necessarily so where one of the actions is in a foreign court. You must examine into the circumstances of the case, and see whether, under the circumstances, it is as vexatious as it would be assumed to be, if the same actions had been commenced in two British courts. That I take to be the effect of *McHenry* v. *Lewis;* the court will of course consider whether the plaintiff should be put to his election, but the circumstances of the case may be such that instead of putting the plaintiff to his election the court will stay one of the two actions. Whether you adopt the principle of putting him to his election or of staying the proceedings in one of the courts, must depend on the circumstances of the case. I take it that there is no question that the court can in the manner I have pointed out stay the foreign action, if the circumstances warrant it, but there is no doubt that where the court has stayed one of the actions it has been most usually that in the English court."

Hewson J., in the *The Lucile Bloomfield*[2] said at page 329:

"In considering whether action taken by a party is vexatious or oppressive, it seems to me that the court must weigh the equities, not only on one side, but on both sides."

The important thing to remember in this case is that the proceedings in Holland commenced by the plaintiffs are *in personam*. The proceedings in France were commenced not by the plaintiffs but by the agent of the defendants and the plaintiffs counterclaimed. It seems to me quite clear from the authorities that the court ought not to stay a plaintiff in this court on the ground that he happens to be a defendant elsewhere. The action which has been started here is an action *in rem* and if I allow it to proceed the plaintiffs will be able to get here the security which they desire to have to cover their claim and it is a remedy which they are *prima facie* entitled to enjoy.

According to the authorities it is not vexatious to have instituted suits in two courts, one being a foreign court. But if the ship is seized and bail is given in one court and another action is instituted in a foreign court it would be vexatious to call upon the owner of the ship in respect of the same cause of action to give bail in two courts at the same time (see *The Christianborg, supra*).

The fact that no security has been furnished in the proceedings abroad distinguishes this case from *The Christianborg* and other cases which have been cited to me. It has been decided in many cases that once a ship has been arrested and bail or security has been furnished the ship released has been purchased and she is free from further arrest in any country in respect of the same claim. But that is very different from the situation that has arisen in this case. Here it is merely a personal action that has been started abroad and where a personal action has been started abroad and it is desired to sue here as well, there is no doubt that it is a matter of discretion for the court whether to make the order in the action in this country. In the present case the plaintiffs are willing to discontinue the action in Holland. The plaintiffs have not done anything further in their action in Holland and they have now elected to come to this court. I can see no sufficient reason to deny them that choice.

I think that *prima facie*, parties who come to this court have a right to have their trial in this court and that I am not justified in depriving them of this right until a clear case has been made out against them.

Another factor that has to be considered is convenience. It is not a dominant factor though it is one which may assume some importance when other things are equal. The defendants say that it is more convenient that the proceedings should be in Paris but where are the witnesses? surely not in France. A mere balance of convenience is not sufficient ground for depriving a plaintiff of the advantages of prosecuting his action in this court. The defendants have not shown that Singapore is not a convenient place to hear this action.

Another point to consider is that the stay must not cause an injustice to the plaintiffs. Considering all the evidence it seems to me that it will be a great hardship on the plaintiffs if they lose this ship as there is no other way in which they can get security. The ship if released can easily be transferred to another person by the defendants.

Then it is said that the vessel could have been arrested by the plaintiffs before the judgment of the French court was given. Reasons have been given by the plaintiffs why earlier action was not taken and they appear to be reasonable.

In my view the defendants have not satisfied the court that the continuance of the action here would work an injustice because it would be oppressive or vexatious to them or would be an abuse of the process of the court.

The only ground in the motion on which stay is asked for is that the plaintiffs' claim herein has already been satisfied by judgment of the French court. But has the plaintiffs' claim already been satisfied by the judgment of the French court? It is clear from the facts that I have set out that the plaintiffs' claim has not been satisfied. What fruits have the defendants obtained from the French judgment? None at all. The French court has only decided preliminary points in their favour — points of jurisdiction.

The conclusion, therefore, which I arrived at is that this application fails and that I should not exercise my discretion to stay the action which has been brought by the plaintiffs in this case.

The motion was therefore dismissed with costs, but the plaintiffs are restrained from prosecuting the proceedings which they have taken in Holland against the defendants.

Motion dismissed.

Solicitors: *Drew & Napier; Rodyk & Davidson.*

LAU LEK ENG & 7 ORS. v. THE MINISTER FOR HOME AFFAIRS, SINGAPORE & ANOR.

[O.C.J. (Wee Chong Jin C.J.) March 25, 1972]

[Singapore — Originating Motion No. 3 of 1971]

Criminal Law and Procedure — Habeas Corpus — Detention under Internal Security Act (Cap. 115, 1970 Ed.).

Constitutional Law — Internal Security Act (Cap. 115, 1970 Ed.) s. 8(3) — Detention under — Allegation that detention was in an improper manner — Whether remedy of habeas corpus available — Internal Security (Detained Persons) Rules, 1960, r. 86.

Internal Security — Detention — Whether superintendent's order was unlawful — Internal Security (Detained Persons) Rules 1960, r. 86 — Internal Security Act (Cap. 115, 1970 Ed.) s. 8(3).

This was a joint application by eight female applicants for a writ of *habeas corpus*. The applicants had been detained under the Internal Security Act (Cap. 115). They claimed that they were detained in an improper manner.

It was alleged that sometime in the middle of 1970, they were ordered by the superintendent of their place of detention to join a "hobby" class where they were required to do manual work for five hours a day. On their refusal to comply with this order, they were punished by being confined in punishment cells for weeks and deprived of "privileges" such as visits, newspapers and reading materials. They contended that the superintendent's order was unlawful as the new rule 86 of the Internal Security (Detained Persons) Rules, 1960, was *ultra vires* section 8(3) of the Act, and the punishment meted out to them rendered the manner of their detention improper.

Held, dismissing the application: (1) the new rule 86 falls within the scope of the powers conferred by section 8(3) of the Act on the Minister to make rules for the discipline of persons detained in a place of detention and is not inconsistent with rule 84;

(2) *habeas corpus* is not an available remedy to an application relating to the manner and conditions of detention.

MOTION.

T. T. Rajah for the applicants.

Francis T. Seow (Solicitor-General), as he then was, and *Kan Ting Chiu* (Deputy Public Prosecutor) for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is a joint application by the abovenamed eight female applicants for a writ of *habeas corpus*. The applicants have been detained under the Internal Security Act (Cap. 115). Though they do not claim that the orders of detention are illegal or invalid, they claim that they are being detained in an improper manner.

They say they are political detainees who have been placed under preventive detention under the Internal Security Act (hereinafter referred to as "the Act") and are different from convicted criminals who are under punitive detention. They say that the Legislature has provided for the manner and conditions of detention of persons detained under the Act in section 8(2) and (3), the provisions of which read as follows: —

"8.—(2) Every person detained in pursuance of an order made under paragraph (a) of subsection (1) or of a direction given